

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE LUIS GRACESQUI,

Petitioner,

10-cr-74 (PKC)

-against-

18 cv 12412(PKC)

ORDER

UNITED STATES OF AMERICA,

Respondent.

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CASTEL, U.S.D.J.:

This Court denied a motion by Jose Luis Gracesqui, pursuant to 28 U.S.C. § 2255, in an Opinion and Order filed on July 9, 2019. (18 cv 12412, Doc 10.) A Clerk's Judgment was entered on July 10, 2019. (Id., Doc 11.) The docket reflects that attached to the Judgment was a Notice of Right to Appeal. (Id. Doc11-1.) It recited as follows:

Please note that the notice of appeal is a one-page document containing your name, a description of the final order or judgment (or part thereof) being appealed, and the name of the court to which the appeal is taken (the Second Circuit) – it does not include your reasons or grounds for the appeal. Once your appeal is processed by the district court, your notice of appeal will be sent to the Court of Appeals and a Court of Appeals docket number will be assigned to your case. At that point, all further questions regarding your appeal must be directed to that court.

A Clerk's docket entry for July 11, 2019 reflects as follows: "Mailed a copy of Memorandum & Opinion, Clerk's Judgment, with Notice of Right to Appeal to Jose Luis Gracesqui ID No: 90249-054 U.S.P. - Canaan P.O. Box 300 Waymart, PA 18472. (aea) (Entered: 07/11/2019)."


Mailed to Jose Gracesqui 1/29/2020

On August 12, 2019 (letter postmarked August 7, 2019), Gracesqui wrote to the Court seeking an extension of time to file his notice of appeal. The Court granted the extension noting that “Gracesqui filed his motion 33 days after Judgment was entered and 28 days after he states that he received notice of the Judgment. The request for an extension was timely.” (Order of October 1, 2019, 18 cv 1242, Doc 15.) The Court granted him until October 15, 2019 to file his notice of appeal and noted that it is a one-page document, quoting from the excerpt above. (Id.) The Order reflects that it was mailed to Gracesqui on October 1, 2019.

Neither the docket of 18 cv 12412(PKC) nor 10-cr-74 (PKC) reflects that a notice of appeal has ever been filed. On January 20, 2020, Gracesqui wrote to the United States Court of Appeals for the Second Circuit claiming that he filed a notice of appeal on October 14, 2019 and that he has never heard further. The letter has been retransmitted to this Court. Neither the Clerk of this Court nor the undersigned’s Chambers has any record of such a notice of appeal.

In the interests of justice, this Court will deem Gracesqui’s letter motion of August 12, 2019 as a notice of appeal. It refers to the caption of the case, the name of the party, the docket number and states : “I would like to appeal the judgment entered in this action on 07/09/2019 did not file a notice of appeal within the require date time period. . . .” The reference to the judgment having been entered on July 9 rather than July 10 is an insignificant discrepancy. The Court expresses no view as to the efficacy of its post-hoc treatment of the August 12 letter motion as a notice of appeal.

SO ORDERED.


P. Kevin Castel
United States District Judge

Dated: New York, New York
January 29, 2020